

Aug 01 - 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/542,681(PCT/US2004/02890) Confirmation No. 9331  
Applicant(s) : Myers, et al.  
Filed : February 3, 2004  
TC/A.U. : Unknown  
Examiner : Unknown  
Title : RUBBER MODIFIED POLYMERS FROM VINYL AROMATIC MONOMERS  
Docket No. : 43229A  
Customer No. : 00109

RECEIVED

01 AUG 2006

Legal Staff  
International Division

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL WITH SUFFICIENT POSTAGE IN AN ENVELOPE ADDRESSED TO: COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450, ON:

July 28, 2006

DATE OF DEPOSIT

Amber K. Mobley

PRINT OR TYPE NAME OF PERSON SIGNING CERTIFICATE

Amber K. Mobley

SIGNATURE OF PERSON SIGNING CERTIFICATE

July 28<sup>th</sup>, 2006

DATE OF SIGNATURE

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

RENEWED PETITION UNDER 37 CFR 1.181

It remains our position that the requirements under 35 U.S.C. 371 for filing in the United States designated/elected office (DO/EO/US) were all met in a timely fashion. We understand and agree that our Petition did not include the statutory *prima facie* evidence (a stamped postcard from the USPTO) indicating receipt of all the listed items (i.e. Declaration signatures of all the inventors) that had been submitted. We clearly stated and provided uncontested evidence that such postcard was submitted to the USPTO with Declarations signed by all inventors but also clearly stated that we never received the stamped postcard back from the USPTO.

It is our position, based on the uncontested documentary and affidavit evidence submitted, that the postcard and Declarations signed by two of the four inventors were lost at the USRO mail center or elsewhere at the USPTO/USRO. That is clearly the reason that we

do not have stamped postcard to submit. Based on discussions with our personnel, our return of receipt post cards have been lost by the USPTO on other occasions for filings by our company, though never within my personal experience. As certainly understandable, it appears virtually impossible to prove that a postcard was received but lost by the USPTO.

However, while not having *prima facie* evidence, we believe that we have shown by uncontested, clear and convincing evidence that and the parts indicated to be missing, Declarations signed by two (2) of the inventors (as well as the notice of receipt post card), were all properly submitted and were lost. We have copies in our file that show they were all prepared and submitted to the USPTO USRO. We submitted an affidavit that supports this position. It appears that the Petition was improperly dismissed.

Understanding, however, that our Petition may still be dismissed and our filing date for purposes of 35 USC 371( c) (1), ( c) (2) and ( c) (4) may remain March 6, 2006, we do not understand the statement in the Decision in the second to the last paragraph that states, "Failure to respond will result in the ABANDOMNENT of the application". It appears this statement is incorrect. The undersigned has attempted twice to reach PCT Legal Examiner Bacares by telephone and a left message but has not yet received a response. Upon discussion with Karen Williams of USPTO on July 27, 2006, it is our understanding that the late filing of missing parts was accepted (the fee was charged to our deposit account) and the present application has been accepted and is currently being further processed for examination. We request clarification of this statement in the Decision at your earliest convenience.

Respectfully submitted,

  
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akm